from the fact that Slavery cannot exist forever in this Republic. It must perish in some way; as I believe in one of two ways-either by absorption or expulsion. It is getting too vast for absorption The sim of those who believe in its disas rous inflaences and permicious results has hitherto been to restrict its apread, in the benevolent desire of bmiting those maken influences and results, and in the hope that it could be thus restrained with n manageable limits and be brought to a peaceful end. The decision now made has been made in the hope of boffling these objects. It has been made with a view to head off the party of restriction and to

give to Slavery full swing. We say now, as we have often said before, in view of the fact that this decision would be made, that the party of restriction, being baffled in their aims, must become the party of expulsion. There is nothing left which will work the removal of the monstrous and tyrannic rule which this decision will impose upon the Free States. The decision is designed to coerce these States into the position of being active participants in the extension of Stavery. They must patiently see their power and their union and their government turned to this use, or they must rebel and extinguish or expel the power which has had the strength and adroitness to put them into such a position. That power is Slavery. Slavery, then, must be queiled. Its ru'e must be breken up and overturned. If Slavery cannot be limited, if its spread cannot be restrained, it must be expelled. The Court has declared that the Free States have no power under the Federal Constitution to limit it or restrain it. There is, then, no alternative looking to permanent relief and the re-establishment of the Government upon a harmonious basis but expulsion. What, then, can be the effect of this strocious judgment of the Court, coming as it does upon the heel of the long series of outrages and ssurpations of the Stave Power, but the initiation of measures looking to this result, or to the others which, under another aim, will only kad to the same end, that of breaking down S avery in the States ? If the action of the Court in this case has been

atrocious, the manner of it has been no better. The Court has rushed into politics voluntarily, and without other purpose than to subserve the cause of Slavery. They were not called, in the discharge of their duties, to say a word about the subject. Judge Curtis created a very marked sensation among his colleagues by charging this as an offense, and a violation of their own rules of judicial action. But they were in hot haste to enter the service of Blavery. They would not wait to be called. They volunteered their service. They consented with anseemly haste to dabble in the dirty waters of political corruption. They at once violated their rules, sacrificed principle, and disgraced the judicial character. They hurried upon infamy. appearance of the Court, during the delivery of the inions and at the final close of the case, was that of pervous exultation over their attempts to garrote the Free States and the people of Freedom. The only consolation an observer could draw the reflection that the garroters would themselves be sent to Coventry in the end. They seemed to feel that they had headed off the great Republican party which came so near triumphing, and had confirmed and cossolids ed the alaveholders' political power. They forgot that their decision would be regarded, throughout the Free States and wherever the pulse of Liberty beats, only as the votes of five slaveholders and two dought sees ppon a question where their opinion was not asked, and where their votes would not count. For this is the true state of the en-c, considering their decision to be as Mr Justice Curtis substantially pronounced it, extra-jucic al, and foreign to the case under review. They had schieved a triumph; but what was that triumph? The Supreme Court had been called to vote on a politica: questien, and but two consistent and judicial minds were found therein. The vote accordingly stood seven to two, the five slaveholders and two doughfaces making up the seven. Their cunning chief had led the van, and olank by plank laid down a platform of historical falsehood and gross assumption, and thereon they all stood exultingly, thinking, or feigning to think, that their work would stand during the remainder of their lives at least. The proceeding had a merit. We judicial caucussing over a political subject on the side of the winning party. It had this merit; no

The opinions of Judge M'Lean and Judge Curtis were exceedingly full and thorough, and erammed with sound doctrine. To speak of their ability would be superfluous. Judge M'Lean stands forth in full lustre, ustering opinions on the side of Justice and Freedom, to which the North will respond as one man in grateful admiration. Judge Curtis followed him with a masterly exposition of the whole subject. On the question of the citizenship of the people of African descent, which Judge Taney laboriously cenied, Judge Curtis's argument was entirely exhaustive. He has settled the question. He ground up the very bones of the Cnief-Justice's argument, and has placed his case upon immutable foundations. He has made the law on this subject, and the question will never be argued again. He may be voted down by Legislatures, Courts, and Executives, but the argument will A rever stand unimpeached. The Chief-Justice and his nex'-door neighbor Wayne evidently feit the crushing weight of his exposition. And while Judge Curtis did not tell his leg il chief that he was guity of falsehood, he did say that his statements would be received with very great surprise, and proceeded to demonstrate his gross historical misrepresentations. The Caief Justice's discomfiture on this point will have a very serious and damaging effect upon the other parts of his opinion, which would be weak enough standing alone, and which, under existing circumstances, deserve no more respeet than any Pro-Slavery stump speech made during the late Presidential canvass. J. S. P.

THE DRED SCOTT CASE.

OPINION OF JUDGE M'LEAN. Dred Scott vs. J. F. H. Sanford.

This case is before us on a writ of error from the Cir-

ouit Court for the District of Missouri. An action of trespass was brought which charges at with an assault and imprisonment of the plaintiff, and also of Harriet Scott his wife, Etiza and Lissy his two-children, on the ground that they were his slaves, which was without right on his part, and against law.

The defendant filed a plea in abatement, "that said sauses of action, and each and every of them, if any such accrued to the said Dred Scott, accrued out of the jerisdiction of this Court, and exclusively within the feriediction of the Courts of the State of Missouri, for that, to wit, said plaintiff, Dred Scott, is not a citizen of the State of Missouri, as alleged in his declaration, because he is a negro of African descent, his ancestors were of pure African blood, and were brought into this country and sold as negro slaves; and this the said Sanford is ready to verify; wherefore he praye judgment whether the Court can or will take further cogni-

was sustained by the Court, the pica in abatement being held insufficient; the defendant was ruled to plead over. Under this rale he pleaded-1. Not Gully

2. That Dred Scott was a negro slave, the property of the defendant; and 3. That Harriet the wife and Eliza and Lizzy, the daughters of the plaintiff, were the lawful slaves of the defendant.

larne was gained on the first plea, and replications of

de injuria were filed to the other pleas.

The parties agreed to the following facts: In the Postor Emerson, who was a Surgeon in the Army of the United States. In that year Dr. Emerson took the plaintiff from the State of Missouri to the post of Rock Island in the State of Illinois, and held him there as a slave until the month of April or May, 1836. At the time last mentioned, Dr. Emerson removed the plaintiff from Rock Island to the military post at Fort

At the time last mentioned, Dr. Emerson removed the plaintiff from Rock Island to the military post at Fort Sneiling, situate on the west bank of the Mississippi River in the territory known as Upper Louisians acquired by the Upited States of France, and situate rorth of the Islitude of 36 deg. 30 min north, and north of the Islitude of 36 deg. 30 min north, and north of the State of Missouri Dr. Emerson held the plaintiff in slavery, at Fort Snelling, from the last mentioned date upfil the year 1838.

In the year 1835 Harriet, who is named in the second count of the plaintiff is declaration was the negro slave of Major Taliaferro, who belonged to the army of the United States. In that year Major Taliaferro, took Harriet to Fort Snelling, a military post situated as hereinbefore stated, and kept her there as a slave until the year 1836, and then sold and delivered her as a slave at Fort Snelling, unto Dr. Emerson, who held her in slavery, at that place, until the year 1838.

In the year 1836 the plaintiff and Harriet were married at Fort Snelling with the consent of Dr. Emerson, who claimed to be their master and owner. Eliza and Lizzy, named in the third count of the plaintiff s declaration, are the funit of that marriage. Eliza is about fourteen years old and was born to board the steasoboat Gipsy, north of he north line of the State of Missouri, and upon the River Mississippi. Lizzy is about seven years old, and was born in the State of Missouri, at the military post called Jefferson Barracks.

In the year 1838 Dr. Emerson removed the plaintiff and said Harriet, and their daughter Eliza from Fort Snelling to the State of Missouri, where they have ever since resided.

Before the commencement of the suit Dr. E nerson red and conveyed the plaintiff. Harriet, Eliza and Lizzy to the defendant as slaves, and he has ever since resided to held them as slaves, and he has ever since claimed to held them as slaves.

At the times mentioned in the plaintiff seclaration the defendant, claiming to be owner, laid his hands

upon said plain iff. Harriet, Eliza and L'zzy and imprisoned them; doing in this respect, however, no more than he might lawfully do, if they were of right his slaves at such times.

In the first place, the plea to the jurisdiction is not before us, on this writ of error. A demunrer to the plea was sustained which ruled the plea bad, and the detendant, on leave, pleaded ever.

The decision on the demurrer was in favor of the plantiff, and as the plantiff prosecutes this writ of error he does not complain of the decision on the demurrer. The defendant might have complained of this decision, as against him and have prosecuted a writ

error he does not complain of the decision of the decision, as against him and have prosecuted a writ of error to reverse it. But as the case, under the instruction of the Court to the Jury, was decided in his favor, of course he had no ground of complaint.

But it is ead if the Court, on looking at the record, shall clearly perceive that the Circuit Court had no instelletion, it is a ground for the dismissal of the case. This may be characterized as rather a sharp practice, and one which seldom, if ever, occurs. No case was cited in the argument as authority, and not a single case precisely in point is recoille sted in our reports. The pleadings do not show a want of jurisdiction. This want of jurisdiction case only be assertained by a judgment on the demurrer to the special plea. No such case, it is believed, can be cited. But if this rule of practice is to be applied in this case and the plain iffi in error is required to answer and maintain as well the points suid of mis favor, as to show the error of those ruled against him, he has more than an ordinary duty to perform. Under such circumstances, the want of jurisdiction in the Circuit Court must be so clear as not to admit of doubt. Now, the plea which raises the vestices invisition in my judgment is radically

duty to perform. Under such circumstances, the want of jurisolicion in the Circuit Court must be so clear as not to admit of doubt. Now, the plea which raises the question of jurisdiction, in my judgment, is radically defective. The gravamen of the piea is this: "That the plaintiff is a negro of African descent, his ancestors being of pure African blood, and were brought into this country and sold as negro slaves."

There is no averment in this plea which shows or conduces to show an inability in the plaintiff to sne in the Circuit Court. It does not allege that the plaintiff has his demicil in any other State, nor that he is not a free man in Missouri. He is averred to have had a negro sneestry, but this does not show that he is not a citizen of Missouri, within the meaning of the Act of Congress, authorizing him to sue in the Circuit Court. It has never been held necessary to constitute a citizen within the act, that he should have the qualifications of an elector. Females and minors may sue in the Federa courts and so may any individual who has a permanent domicil in the State under whose laws his rights are protected, and to which he owes allegiance.

Being bern under our Constitution and laws, no naturalization is required, as one of foreign birth, to make him a citizen. The most general and approprise definition of the term citizen is "a freeman." Being a treeman, and having his domicil in a State different from that of the defendant, he is a citizen within the Act of Congress, and the Courts of the Union are open to him.

It has often been held, that the jurisdiction, on the

It has often been held, that the jurisdiction, on the ground of parties, can only be exercised between citizers of different States, and that a mere residence

been done, and on this ground the plea was defective, and the demurrer was properly sustained. No impli-cation can aid a plea in abatement or in bar; it must cation can aid a plea in abatement or in bar; it must be complete in itself, the facts stated, if true, must abate or bar the right of the plaintiff to sue. This is not the character of the above plea. Fhe facts stated, it admitted, are not inconsistent with other facts, which may be presumed, and which bring the plaintiff within the act of Congress.

The pleader has not the boldness to allege that the plaintiff is a slave, as that would assume available by

is a slave, as that would assume against him plaintiff is a slave, as that would assume against him the matter in controversy and embrace the entire merits of the case in a plea to be jurisdiction. But beyond the facts set out in the plea, the Court, to sustain it, must assume the plaintiff to be a slave, which is decisive on the merits. This is a short and an effectual mode of deciding the cause; but I am yet to learn that it is sanctioned by any known rule of pleading.

it is sanctioned by any known rule of pleading.

The defendant's counsel complain, that if the Court take inrisdiction on the ground that the plaintiff is free, the assumption is against the right of the master. This argument is easily answered. In the first place, the plea does not show him to be a slave; it does not follow that a man is not free whose ancestors were slaves. The reports of the Supreme Court of Missouri show that this assumption has many exceptions; and there is no averment in the plea that the plaintiff is not within them. By all the rules of pleading, this is a fatal defect in the plea. If there be doubt, what rule of construction has been established in the Slave States? In Jacob vs. Sharp, (Meigs' Rep., Tennessee, 114) the Court held, when there was doubt as to the construction of a will which emancipated a slave, "it must be construed to be subordinate to the higher and more important right of freedom."

portent right of freedom.

No hips the can result to the master from an exercise of jurisdiction in this cause. Such a decision does not in any degree affect the merits of the case, it only enables the plaintiff to assert his claim to freedom before this tribunal. If the jurisdiction be ruled against him, on the ground that he is a slave, it is decisive of

his f-te

It has been argued that if a colored person be made
a citizen of a State he cannot sue in the federal Court.
The Constitution declares the federal jurisdiction
"may be exercised between citizens of different
States," and the same is provided in the act of 1789.

"may be exercised between citizens of different States," and the same is provided in the act of 1789. The above argument is properly met by saying that the Constitution was intended to be a practical instrument; and where its language is too plain to be misunderstood the argument ends.

In Chirac vs. Chirac (2 Wheat. 261; 4 Cartis, 99), this Court cays: "That the power of naturalization is exclusively in Congress does not seem to be, and certainly ought not to be controverted." No person can legally be made a citizen of a State, and coosequently a citizen of the United States, of foreign birth, unless he be naturalized under the acts of Congress. Congress has power "to establish a uniform rule of naturalization." It is a power which belongs exclusively to Congress, as intimately connected with our federal relations. A State may authorize foreigners to hold real ceta's within its jurisdiction; but it has no power to naturalize foreigners and give them the rights of citizens. Such a right is opposed to the acts of Congress on the subject of naturalization, and subversive of the federal powers. I regret that any countenance should be given from this bench to a practice like this in some of the States which has no warrant in the Constitution. In the argument it was said that a colored citizen.

In the argument it was said that a colored citizen would not be an agreeable member of society. This is more a matter of taste than of law. Several of the States have admitted persons of color to the rights of suffrage and in the view have recognized them as citizens; and this has been done in the Slave as well as the Free States. On the question of citizenship, it must be admitted that we have pot been very fastitions. Under the late treaty with Mexico, we have in de citizens of all grades, combinations and colors. The same

was done is the admission of Louisians and Faorida No one ever doubled and no court ever held, that the perple of these Territories did not become citizens under the treaty. They have exercised all the rights of eithers without being naturalized under the acts of

Corgress
There are several important principles involved in

There are several important principles involved in this case, which have been argued and which may be considered under the following heads:

1. The locality of Slavery as settled by this Court and the Courts of the States.

2. The relation which the Federa Government bears to Slavery in the States.

3. The power of Congress to establish Territorial Governments, and to prohibit the introduction of Slavery therein.

4. The affect of taking places into a new State or

4. The effect of taking slaves into a new State

Territory, and so holding them where Slavery is prowid.

Whether the return of a slave under the control of

his master, af er being entitled to his freedem, reduces him to his former condition.

6. Are the decisions of the Supreme Court of Mis-

him to his former condition.

6. Are the decisions of the Supreme Court of Missouri, on the questions before us, binding on this Court, within the rule adopted.

In the course of my judicial duties I have had occasion to consider and decide several of the above points.

1. As to the locality of Siavery. The civil law throughout the Continent of Europe, it is believed, without an exception is, that Slavery can exist only within the territory where it is established, and that if a slave escapea, or is carried beyond such territory, his master cannot reclaim him, unless by virtue of some express stipulation Grotius, lib 2 ch 15, 5, 1, lib. 10 ch. 10, 2, 1; Wiegueposts Embassador, lib. 1, p. 418, 4
Martin, 285. Case of the Creole in the House of Lords, 1842; 1 Phillimore on International Law 316, 335.

Trere is no nation in Europe, which considers itself bound to return to his master a fugitive slave, under the civil law or the laws of nations. On the contrary, the slave is held to be free where there is no treaty obligation, or compact in some other form, to return him to his master. The Roman law did not allow feedom to be fold. An Embassador or any other public functionary could not take a slave to France, Spain, or any other country of Europe, without emancipating him. A number of slaves escaped from a Florida plautation, and were received on board of ship by Admiral Cochran, by the King's Bench they were held to be free 2 Barn, and Cres., 440.

In the great and leading case of Pring vs. The State of Pennsylvania, 16 Peters, 594: 14 Curris, 421 this Court say that by the general law of nations no nation is bound to recognize the state of Slavery, as to foreign slaves found within its territorial dominions, where it is in opposition to its own policy and institutions in favor of the subjects of other nations where Slavery is organized. If it does it, it is as a matter of comity, and not as a matter of international right. The state of Slavery is a to state of Slavery as to foreign slaves found within its territo

and not as a matter of international right. The state of Slavery is deerred to be a mere municipal regula tion, founded upon and limited to the range of the territorial laws. This was fully recegnized in Somerset's caree, Lafit's Rep., 1; 20 Howell's State Trials, 79—which was decided before the American Revolution.

There was some contrariety of opinion among the Judges on certain points ruled in Priggs case, but there was none in regard to the great principle that Slavery is limited to the range of the laws under which it is sanctioned.

there was hone in regard to the great principle that Slavery is limited to the range of the laws under which it is sanctioned.

The case in England appears to have been more thoroughly examined than that of S myresti's. The judgment announced by Lord Mansheld was the judgment of the Court of King's Bench. The cause was argued at great length and with great ability by Hargrave and others, who stood among the most eminent coursed in England. It was held under advisement from term to term, and a due sense of its importance was felt and expressed by the Bench.

In giving the opinion of the Court, Lord Munsheld said:

consistent, and time their of a nature that nothing can be suffered to support it but positive law."

He referred to the contrary opinion of Lord Hardwicke in October, 1749, as Ceanvellor: "That he and Lord Taibot when Autorney and Solicitor General, were of opinion that no such claim as here presented for Freedom, was valid."

The weight of this decision is sought to be impaired from the terms in which it was described by the can bernit imagination of Curran. The words of Lord Manefield, in giving the opinion of the Court were such as were fit to be used by a great Judge, in a most important case. It is a sufficient answer to all objections to that judgment, that it was pronounced before the Revolution, and that it was considered by this Court as the highest authority. For near a century the decision in Somerett's case has remained the law of England. The case of the slave Grace, decided by Lord Stowell in 1827, does not, as has been supposed, overrule the judgment of Lord Manefield. Lord Stowell held that, during the residence of the slave in England. "No dominion, autherity or coersion can be exercised over thim." Under snother head I shall have occasion to examine the opinion is one case. shall have occasion to examine the opinion is

To the position that Slavery can only exist except under the authority of law it is objected, that in few if in any instances has it been established by statutory enactment. This is no answer to the doctrine laid down by the Court. Almost all the principles of the down by the Court. Almost all the principles of the common law had their f undation in usage. Slavery was introduced into the colonies of this country by Great Britain at an early period of their history, and it was protected and cherished, ut til it became incorporated into the colonial policy. I is immaterial whether a system of Slavery was introduced by express law, or otherwise if it have the auth rily of law. There is no slave State where the institution is not recognized and protected by statutory enactments and judicial decisions. Slaves are made property by the laws of the Slave States and, as such are lisale to the claims of creditors; they descend to heir, are taxed, and in the South they

of Kentucky says: "In deciding the question (of Savery) we disclaim the influence of the general principles of liberty which we all admire, and conceive it ought to be decided by the law as it is and not as it ought to be. Slavery is sanctioned by the laws of this State, and the right to hold slaves under our municipal regulations is unquestionable. But we view this as a right existing by positive law of a municipal character, without foundation in the law of nature or the unwritigated secretary."

en and common law."

I will now consider the relation which the Federal Government bears to Slavery in the States:

Slavery is emphatically a State institution. In the oth rection of the 1st article of the Constitution, it is provided "that the migration or importation of such persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the year 1808, but a tax or duty may be imposed on such importation, not exceeding \$10 for each person."

In the Convention it was proposed by a Committee of sleave to limit the in portation of slaves to time year.

In the Convention it was proposed by a Communic of eleven to limit the it ports ion of slaves to the year 1800, when Mr. Pinckney moved to extend the time to the year 1808. This motion was carried—New-Hamp shire, Marsachusettis, Connecticut, Maryland, Noth Carolina, South Carolina and Georgia voting in the sfirmative; and New-Jersey, Pennsylvania and Virginia in the negative. In opposition to the motion Mr. sfirmative; and New-Jersey, Pennsylvanis and Virginia in the negative. In opposition to the motion, Nr. Madison said: "Twenty years will produce all the machief that can be apprehended from the liberty to import slaves; so long a term will be more dishonorable to the American character than to say nothing about it in the Constitution" (Madison Papers). The provision in regard to the slave trade shows clearly that Congess considered Slavery a State institution, to be continued and regulated by its individual sovereignty; and to cercitate that interest the slave trade was continued twenty years—not as a general measure but for the "benefit of such States as shall think proper to encourage it."

sign it."

In the case of Groves vs. Slanghter, 15 Peters 449, 14 Cartis 137, Merers. Clay and Webster contended that under the commercial power, Congress had a right to regulate the Slave Trade among the several States, but the Court heid that Congress had no power to interfere with Slavery as it ensist in the States, or to regulate what is called the Slave Trade among them. If this trade were subject to the commercial power, it would follow, that Congress could abolish or establish Slavery in every State of the Union.

The only connection which the Federal Government holds with slaves in a State, arises from that provision

The only connection which the Federal Government bolds with slaves in a State, arises from that provision of the Constitution which declares that, "No person held to service or labor in one State under the last thereof, escaping into another, shall it consequences of any law or regulation therein, be discharged from such service or labor, but shall be delivered up, on claim of the party to whom such service or labor may be due." This being a fundamental law of the Vederal Government it rests mainly for its execution, as has been held, on the Judicial power of the Union; and so far as the rest dittin of furtives from labor has become a sub-

held, on the Judicial power of the Union; and so far as the resultion of fugitives from labor has become a subject of Judicial action the Federal obligation the been faithfully discharged.

In the formation of the Federal Constitution care was taken to confer no power on the Federal Government to interfere with this institution, in the states. In the provision respecting the alave trade, in fixing the ratio of representation, and providing for the reclamation of fugitives from labor, slaves were neferred to as persons, and in no other respect are they considered in the Constitution.

We need not refer to the mercenary spirit which in treduced the infamous traffic in slaves to show the deg-

We need not refer to the mercenary spurit which in treduced the infamons traffic in slaves to show the deg-radation of negro slavery in our country. This system was imposed upon our Colonial settlements by the mother country, and it is due to truth to say that the commercial Colonies and States were chiefly engaged in the traffic. But we know as a historical fact that James Madison, that great and good mu, a leaving member in the Federal Convention, was solicitous to

guard the language of that instrument so as not to em-

the death and there could be properly in man.

I orefer the lights of Madison, Hamilton and Jay, as a means of constraining the Constitution in all its bearings, rather than to look behind that period into a trailing which is now declared to. hys, rather than to look beams that period into the field in now declared to be pirsuy and panished with death by Christian nations. I do not like to draw the sources of our domestic relations from so dark a ground. Our independence was a great epoch in the history of Freedom, and while I admit the Government was not made specially for the solvest race, yet, many of them were citizens of the New England Siace, and exercised the rights of suffrage when the Constitution was controlled and if was not doubted by any interon was adopted, and it was not doubted by any

needs person that its tendencies would greatly about the tree for dition.

Many of the States, on the adoption of the Constitation, or shortly afterward, to k measures to abdish Slavery within their respective jurisdictions; and it is a well known fact that a belief was chrished by the leading men South as well as North, that the institution of Slavery would gradually decline, until it would become extinct. The increased value of slave isbor, in the culture of cotton and sugar prevents due readization of this expectation. Like all other communities and States, the Son h were influenced by what they considered to be their own interests.

But if we are to turn our attention to the dark ages of the world, why comme our view to colored Slavery! On the same principles white men were made slaves. All Slavery has its origin in power, and is against right. The power of Congress to establish Territorial Governments, and to prohibit the introduction of Slavery therein, is the next point to be considered.

After the cession of western territory by Vorginia and other States, to the United States, the public attention was directed to the best mode of disposing of it for the general benefit. While in attendance on the Federal Convention, Mr. Madison, in a letter to E1-murd Randouph dated the 22a April, 1787, says: "Congress are deliberating on the plan most eligible for disposing of the Western Territory not yet surveyed. Some alteration will probably be made in the Ordinance on that subject." And in the same letter he says: "The inhabitants of the lithnois complain of the land jobbers, &c. who are purchasing titles a nong them. Those of St. Vincents complain of the defect crin had and civil justice smong them, as well as of nilitary protection." And on the next day he writes to Mr. J. Alerson: "The Government of the settlements on the litinois and Wabash is a subject very perplexing in itself and reade ed mores; by our ignorance of the many circumstances on which a right judgment depends. The inhabitants at those places cla

id criminal justice In May, 1787, Mr. Edmund Randolph submitted to

basis of a Federal Government, among which was the following:
Resolved. That provision ought to be made for the admission of States lawfully arising within the limits of the United States, whether from a voluntary junction of government and territory of otherwise, with the consent of a number of voices in the National Legislature, less than the whole.

Afterward Mr. Madison submitted to the Convention, in order to be referred to the Committee of Detail, the following powers, as proper to be added to those of general legislature.

To dispose of the unappropriated lands of the United States. To institute temporary Governments for new States arising therein. To regulate affairs with the Indiane, as well within as without the limits of the United States.

States. To institute temporary Governments for new States arising therein. To regulate affairs with the Indiane, as well within as without the limits of the United States.

Other propositions were made in reference to the same subjects which it would be tedious to enumerate. Mr Gouverneur Morris proposed the following: "The Legislature shall have power to dispose of and make all needful rules and regulations respecting the territory or other properly belonging to the United States; and nothing in this constitution contained shall be so construed as to prejudice any claims either of the United States or of any particular State." This was adopted as a part of the Constitution, with two verbal alterations—Congress was substituted for Legislature, and the word "either" was strings in out.

In the organization of the new government, but little rever ne for a series of years was expected from commerce. The public lands were considered as the principal resource of the country for the payment of the Revolutionary debt. Direct taxation was the government. The short period that occurred between the cession of Western lands to the Federal Government by Virginia and other Sie's and the adoption of the Constitution was sufficient to show the necessity of a proper land system and a temporary government. This was clearly seen by propositions and remarks in the Federal Convention, some of which are above cited, by the passage of the Ordinance of 1787, and the adoption of that instrument by Congress, under the Constitution, which gave to it validity.

It will be recollected that the deed of cession of Western territory was made to the United States by Virginia in 1784, and that it required the territory code to be laid out into States, that the land should be disposed of for the common benefit of the States, and the was the form of cession from other States.

On the 13 h of July, the Ordinance of 1787 was passed, "for the government of the United States territory north-west of the liver Ohio," with but one dissenting word. This

citizers of different States, and that a mere residence is not sufficient; but this has been said to distinguish a temporary from a permanent residence.

To constitute a good plea to the jurisdiction, it must negative those qualities and rights which enable an incividual to sue in the Federal Courts. This has not likely descend to heirs, are taxed, and is the South they are a subject of commerce.

In the case of Rankin vs. Lydia, 2 A. K. Marshall's Rep., Judge Mills, speaking for the Court of Appeals of Kentucky says: "In deciding the question (of the 4th article of the Constitution they did make provision of the strength of the s public lands, and the temporary government of the erritory. Without a temporary government new States could not have been formed, nor could the pub-

lic lands have been sold.

If the 3d section were before us now for consideration for the first time, under the facts stated, I could not her the first time, under the facts states, I could not heritate to say there was adequate legislative power given in it. The power to make all needful rules and regulations is a power to legislate. This no one will controvert, as Congress cannot make "rules and regulations," except by legislation. But it is argued that the word tentiory is used as synonimous with the word land; and that the rules and regulations of Congress are limited to the discontinuous. land; and that the rules and regulations of Congress are limited to the disposition of "lands and other property belonging to the United States." That this is not the true construction of the section appears from the fact that the first line of the section, "the p wer to dispose of the public lands" is given expressly, and in addition, "to make all needful rules and regulations." The power to dispose of its complete in itself, and requires nothing more. It authorizes Congress to use the proper means within its discretion, and any further provision for this purpose would be a use less verbiage. As a composition the Constitution is remarkably free from such a charge.

In the discussion of the power of Congress to govern a Territory, in the case of the Atlantic Insurance Company vs. Canter, (I Peters 511, 7 Curits, 685.) Chief Justice Marshall speaking for the Court, said, unegard to the people of Florica, "They do not however, par-

to the people of Florica, "They do not however, parficipate in political power; they do not chare in the Government till Florida snall become a State; in the meaning Florida continues to be a Territory of the

meantime F'orida continues to be a Territory of the United States, governed by virtue of that clause in the Constitution which empowers Congress to make all readful rules and regulations respecting the territory or other property belonging to the United States.

And he adds. "Perhaps the power of governing a Territory belonging to the United States, which has not, by becoming a State, acquired the means of self-govern ment, may result becessarily from the fact that it is not within the jurisdiction of any particular State, and is within the power and jurisdiction of the United States. The right to govern may be the inevitable consequence of the right to acquire territory; whichever may be the source whence the power is derived, the poesession of its in questioned. And in the close of the opinion the Court say, "In legislating for them libe Territories]. Congress exercises the combined powers of the General and State Governments."

Some consider this opinion to be loose and inconclin-

Some consider this opinion to be loose and inconclusive; others, that it is arbitar ducts, and the last sentence is a ject-d to as recognizing absolute power in Congress over Territories. The learned and elequent Wirt, who, in the argument of a cause before the Court, had occasion to circ a few sentences from an opinion of the Chief Justice, observed: "No one can mistake the style, the words so completely match the thousant."

thought."

I can see no want of precision in the language of the Chief Justice; his meaning caunct be mistaken. He states first, the third section as giving power to Con gives to govern the Te ritories, and two other grounds from which the power may also be implied. The obwhich of the grounds stated he considered the source of the power. He did not specifically state this, but he did say, "Whichever may be the source whence ci the power. He did not specifically state this, but he did say, "Whichever may be the source whence the power is derived, the possession of it is acquisitioned." No epinion of the Court could have been expressed with a stronger emphasis; the power in Congress is unquestioned. But those who have undertaken to cri wise the opinion consider it without anthority, because the Chief Justice did not designate specially the power. This is a singular objection. If the power be unquestioned, it can be a matter of no importance on which ground it is exercised.

The opinion clearly was not orbiter dicta. The turning point in the case was, whether Googress had power to authorize the Territorial Legislature of Florida to

pare the law under which the Territorial Court was established, whose decree was brought before this Court for ravision. The power of Congress, therefore, was

for revision. The power of Congress, therefore, was the point in issue.

The werd "territory," according to Worcester, "means land country—a district of country under a temperary government." The words "territory or other property," as used, do imply, from the use of the pronoun other, that territory was used as descriptive pronoun other, that territory was used as descriptive of a district of country. In both of these senses it belonged to the United States; as land, for the purpose of sale—as territory, for the purpose of government.

But, if it be admitted that the word territory as used means land and nothing but land, the power of Con-

government.

But, if it be admitted that the word territory as used means land and nothing but land, the power of Congress to organize a temporary government is clear. It gress to organize a temporary government is clear. It has power to make all needful regulations respecting the public lands, and the extent of those "needful regulations" depends upon the cisc etion of Congress, where the means are appropriate to the end and do not combet with any of the prohibitions of the Constitution. If a temporary government be deemed needful, recessary requisite, or is wanted. Congress has power to establish it. This Court say, in McCalloch vs. The State of Maryland, 4 Wheat 316. "If a certain means to carry into effect any of the powers expice by given by the Constitution, to the Government of the Union, be an appropriate measure, not prohibited by the Constitution, the degree of its neverality is a question of legislative discretion, not of judicial cognitions.

The power to establish Pest-Offices and Post Roads gives power to Congress to make contracts for the transportation of the mail, and to punish all who commit expredations upon it in its transit, or at its places of ristribution. Congress has power to regulate commerce, and, in the exercise of its discretion to lay an embargo, which suspends commerce; so, under the same power, harbors, lighthouses, breakwaters, &c., are constructed.

re constructed.

Did Chie Justice Marshall, in saying that Congress governed a Territory by exercising the combined powers of the Federal and State Governments, refer to unerr of the Federal and State Governments, refer to unlimited discretion? A Government which can make white men slaves? Surely such a remark in the argument must have been inadvertently uttered. On the contrary, there is no power in the Constitution by which Congress can make either white or black men slaves. In organizing the Covernment of a Territory Congress is limited to means appropriate to the attainment of the Constitutional of better to the constitutional of the Constitutions, or which are contrary to its spirit so that whether the object may be the protection of the persons and property of purchasers of the dublic lands, or of communities who have been sureced to the Union by conquist or purchases, they are initiatory to the cetablishment ties who have been annexed to the Union by conquest or purchase; they are initiatory to the establishment of State Governments, and no more power can be slaimed or exercised than is necessary to the attain-ment of the end. This is the limitation of all the Fed-

of State Governments, and no more power can be slaimed or exercised than is necessary to the attainment of the end. This is the limitation of all the Federal powers.

But Congress has no power to regulate the internal concens of a State, as of a Territory; consequally, in providing for the government of a Territory, to some extent, the combined powers of the Federal and State Government are necessarily exercised.

If Congress should deem slaves or free colored person in tyrinious to the population of a Free Territory, as conducing to lessen the value of the public lands, or on any other ground connected with the public interest, they have the power to prohibit them from becoming settlers in it. This can be sustained on the ground of a sound national policy, which is so clearly shown in our history, by practical results, that it would seem no considerate individual can question it. And, as regards any unfairness of such a policy to our Southern brethman under the summer of the Union they have in the Stave States a larger extent of fertile Territory than is included in the Free States and it is submitted, if masters of slaves be restricted from bringing them into free territory, that the restriction on the free citizens of non-slaveholding States, by bringing slaves into feee territory, is four times greater than that complained of by the South. But not only so, some three or four hundred thoursand bolders of slaves, by bringing them into Free territory, imprese a restriction on twenty milions of the Free States. The repugnancy to Slavery would probably prevent fifty or a hundred freemen from estiling in a Stave Territory, where one slaveholder would be prevented from settling in a Free Territory.

This remark is made in answer to the argument urged, that a prohibition of Slavery in the Free Territores, is inconsistent with the continuanse of the Union. Where a Territorial Government extends to the entire limit of any organized Frintory or State, and to the deubts that such a jurisdiction, it would be repelled. T

eriment to carry out a power expressly vested in Con-gress—as the disposition of the public lands—may not such government be instituted by Congress! How do we read the Constitution? Is it not a practical instru-

ment? which is inhibited by the Constitution, or which may be against the theory of its construction. As my opinion resis on the third section, these remarks are mide as resis in the faird section, these remains are made as an intimation that the power to establish a temporary government may arise, also on the other two grounds saited in the opinion of the Court in the insurance case, without weakening the third section.

I would here simply remark that the Constitution was formed for our whole country. An expansion or

was formed for our whole country. An expansion or contraction of our territory required no change in the fur damental law. When we consider the men who said the founcation of our Government and carried it into operation, the men who occupied the beach, who filled the halls of legislation and the Chief Magistracy it would seem if any question could be settled dear of all doubt, it was the power of Congress to e tablish Terridoubt, it was the power of Congress to e tablish Territorial Governments. Slavery was probabled in the entire north western territory, with the approbation of leading men South and North; but this probioi ion was not retained when this ordinance was adopted for the government of southern territories where Savery existed. In a late republication of a letter of Mr. Madison, dated November 27, 1819, speaking of this power of Congress to prehioit Savery in a territory, be infirst there is no such power from the fact that it has not been exercised. This is not a very gatisfactory argument against any power, as there are but few if any subjects on which the constitutional powers of Congress are exhausted. It is time, as Mr. Madison states, that Congress, in the act to establish a government in the Mississippi Territory, prehinted the importation of slaves into it from foreign parts; but it is equally true, that in the act foreign parts; but it is equally true, that in the act erecting I ouisiani into two Territories, Congress de erecting I outsiant into two Territories, Congress de clars d. "It shall not be lawful for any person to bring into Orleans Territory, from any port or place within the limits of the United States, any slave which shall have been in ported since 1798, or which may be reafter be imported, except by a cilizen of the United States who settles in the Territory, under the penalty of toe freedom of such alays. The inference of Mr. Madifreeden of such slave. The inference of Mr. Madi-rot, therefore, against the power of Congress, is of no force, as it was founded on a fact supposed, which did it exist.

It is refreshing to turn to the early incidents of our

It is refreshing to turn to the early incidents of our history, and learn wisdom from the acts of the great men who have gone to their account. I refer to a report in the House of Representatives, by John Kindolph of Roadoke, as Chairman of a Committee in March 1862—fifty four years ago. From the Convention held at Vincetnes, in Indians, by their President and from the people of the Territory, a perition was presented to Congress, praying the suspension of the provision which prohibited Slavery in the Territory. The report stated "that the rapid population of the State of Ohio sufficiently vinces, in the opinion of your Committee, that the labor of claves is not necessary to premote the growth and settlement of colonies in that region. That this labor demonstrably the dearest of any, can siny be employed to advantage in dearest of any, can enly be employed to advantage in the cultivation of products more valuable than any known to that quarter of the United States; that the stown to that quarter of the United States; that the Committee doesn it highly dangerous and to appetient to impair a provision westly calculated to promote the Lagraness and prosperity of the North Western country, and to give strength and ascurity to that extensive frontier. In the salutary operation of this asgacious and benevelent restraint, it is believed that the inhabitants will, at no very distant day, find ample remonstration for a temporary privation of labor and of emigration." (I vol. State Papers, Pub ic Lands 100.)

The judicial mind of this country, State and Federal, has agreed on no subject, within its legitimate action, with equal manimity as on the power of Congress to

with equal manimity as on the power of Congress to establish Terriferial Governments. No Court State of Federal, no Judge or statesman, is known to have had any doubts on this question for nearly sixty years after the power was carriered. Such Governments have been established from the sources of the Ohio to the Gulf of Mexico, extending to the lakes on the

north and the Pacific Ocean in the west, and from the lines of Georgia to Texas.

Great interests have grown up under the Territorial laws over a country may than five times greater in extent than the original Thirt en Sistes, and there interests, or portal or otherwise, have been oberished and coreolidated by a benige policy without any one supposing the law making power had united with the Jadiciary under the universal sanct n of the whole country to usurp a jurisdiction which did not belong to them. Such a directory at the late date, is more extraordinary than anything which has occurred in the judicial history of this or any other country. Texas under a previous organization was admitted as a Siste, but no State can be admitted into the Union which has not been organized under some form of Government. Without temp rary Governments our public lands could not have been said, nor our wilderness reduced to cultivation and the populsion protected; nor could our flourishing States West and South been formed.

What do the lessons of wisdom and experience teach, under such circumstates, if the new fight which has so raddenly and unexpectedly burst upon as be true! Acquiescence, acquies ence, under a settled construction of the Constitution for sixty years, though it may be erroneets, which has secured to the country an advancement and prosperity beyond the power of computation.

An act of James Madison, when President, foreibly porth and the Pacific Ocean in the west, and from the

an advancement and prosperity beyond the power of computation.

An act of James Madison, when President, forcibly illustrates this policy. He had made up his opinion that Congress had no power more the Constitution to establish a National Bank. In 1815 Congress passed a bill to establish a bank. He veto-d the bill on objections other than constitutional. In his message he speaks as a wise stateman and of lef magistrate as follows: "Waiving the question of the constitutional authority of the legislature to establish an incorporated bank, as being precluded, in my judgment, by the repeated recognitions under varied discumstances of the validity of such an institution in acts of the legislative, executive and judicial branches of the Government, as companied by indications in different modes,

the validity of such an institution in acts of the legislative, executive and judicial branches of the Government, accompanied by indications in different modes, of a concurrence of the general will of the nation. Has this impressive lesson of practical wisdom becomed lest to the present generation. If the great and fundamental priociples of our Government are never to be settled there can be no lasting prosperity. The Constitution will become a floating prosperity. The Constitution will become a floating wait on the billows of popular excitement.

The prohibition of Slavery north of 36 deg. 30 min, and of the State of Missouri, contained in the act admitting that State into the Union, was passed by a vote of 134, in the House of Ropresentatives, to 42. Before Mr. Monree signed the act, it was submitted by him to his Cabinet and they held the restriction of Slavery in a Territory, to be within the Constitutional powers of Congress. It would be singular, if in 1804, Congress had power to prohibit the introduction of slaves in Orleans Territory from any other part of the Union unjer the penalty of Freedom to the slave, if the same power, embodied in the Missouri Compromise could not be exercised in 1820.

But this law of Congress, which prohibits Slavery north of Missouri and of 36 deg. 30 mm. is declared to have been null and void by my brethrea. And this opinion is founded mainly, as I understand, on the distinction drawn between the ordinance of 1787 and the Missouri Compromise line. In wha does this distinction consist? The ordinance, it is said, was a compact entered into by the confederated States before the adaption of the Constitution, and toat in the creation of ferritory authority was given to establish a Territorial Gov-

of the Constitution, and that in the cession of tory authority was given to establish a Territorial Gov-

tory authority was given to establish a Territorial Government.

It is clear that the ordinance hid not go into operation by virtue of the authority of the Confederation, but by reason of its modification and adaption by Congress under the Constitution. It seems to be supposed in the opinion of the Court that the articles of cession placed it on a different footing from Ferritories subsequently acquired. I am unable to perceive the force of this ofstinction. That the ordinance was intended for the government of the North-Western Territory, and was limited to such Territories with modifications by acts of Congress, and to some Northern Territories, But the ordinance was made valid by the act of Congress, and without such act could have been of no force. It rested for its validity on the act of Congress the same, in my opinion, as the Miss suri Compromise ince.

force. It rested for its validity on the act of Congress the same, in my opinion, as the Miss suri Compromiss line.

It Congress may establish a Territorial Government in the exercise of its discretion it is a clear principle that a Court cannot control that discretion. This being the case, I do not see on what ground the act is held to be vold. It did not purport to forfeit property or take it for public purposes. It only prohibited six very, in doing which it fellowed the Ordinance of 1787.

I will now consider the fourth head which is: "The effect of taking slaves into a State or Ferritory, and so holding them where Slavery is prohibited."

If the principle laid down in the case of Prigg v. The State of Penneylvania is to be maintained, and it is certainly to be maintained until overruled, as the the law of this Court, there can be no difficulty on this point. In that case, the Court say "The state of Slavery is deemed to be a mere municipal regulation, four ded upon and limited to the range of the Territorial awa." If this be so Slavery can exist no where except order the authority of law found don usage, having the force of law, or by statutory recognition. And the Court further say, "It is manifest from this consideration, that if the Constitution had not contained the clause requiring the renocition of fugitives from labor, every non-Slaveholding State in the Union, would have been at liberty to have declared free all reneway slave coming within its limite, and to have siven their masters."

Now if a slave abconds he may be reclained; but the accompany his master into a State or Territory in which Slavery is prohibited, such slave cannot be said to have left the seavice of his master, where his services were legalized. And if Slavery be limited to the range of the Territorial laws, he v can the slave be corred to serve in a State or Territory, not only without the authority of law, but against the course the will of

the authority of law, but against its express provisions? What gives the master the power to course the will of his slave? The local law, which exists in some form. But where there is no such law can the master control the will of the s ave by force ! Where no Slave ists, the presumption, without regard to color, is in fa-vor of freedom. Under such a jurisdiction, may the c.ik nd man be levied on as the property of his master by a creditor? On the decease of 'be muster, does the slave deceend to his heirs as property? Can the mas-ter sell him? Any one or all of those acts may be done to the s'ave, where he is legally held 'o service. But where the law does not confer this power it cannot be

exerc'sed.

Lord Marsfield held that a slave brought into Eng-Lord Mansfield held that a slave brought in o England was free. Lord Stowell agreed with Lord Mansfield in this respect, and that the slave could not be occreed in England; but on her voluntary return to Antigua, the place of her slave domicil, her former status attached. The law of England did not prohibit Slavery, but did not authorize it. The jurisdiction which prohibits Slavery is much stronger in behalf of the slave within it than where it only does not authorize.

By virtue of what law is it that a master may take By virtue of what law is it that a master may take bis slave into free territory and exact from him the duties of a slave! The law of the territory does not sanction it. No authority can be claimed under the Constitution of the United States or any law of Congress. Will it be said that the slave is taken as property, the same as other property which the master may own! To this I answer that colored persons are made property by the law of the State and no such power has been given to Congress. Does the master carry property by the law of the State and no such power has been given to Congress. Does the mester carry with bim the law of the State from which he removed into the territory? and does that enable him to coeres his slave in the territory? Let us test this theory. If this may be done by a master from every other Slave State, it may be done by a master from every other Slave State. This right is supposed to be connected with the person of the master by virtue of the local law. Is it transferrable? May it be negotiated as a promissory note or bill of exchange? If it be seelgoed to a man from a Free State, may be coerce the slave by virtue of it? What shall this thing be denominated? Is it personal or real property? Or is it an inceficable fragment of sovereignty which every person carries with him from his late domicil? One thing is certain, that its origin has been very recent, and it is unknown to the laws of

his late domicil? One thing is certain, that its origin has been very recent, and it is unknown to the laws of any civilized country.

A rlave is trought to England form one of its islands, where Slavery was introduced and maintained by the mother country. Although there is no law probabiling Slavery in England, yet there is no law antherizing it; and for near a century its courts have declared that the slave there is free from the corroin of the master. Lords Mannfield and Slowell agree upon his rolls and there is no discovering antherity.

the master. Lords Manifield and Sowiell agree upon his point and there is no dissenting authority. There is no other description of property which was not protected in Eagland, brought from one of its slave islands. Does not this show that property in a human being does not arise from nature or from the con most law, but in the language of this Court. "It is a more numerical regulation, founded up in and limited to the range of the Territorial laws." This decision is t) the range of the Territorial laws. The decision is not a mere argument, but it is the end of the law, in regard to the extent of Slavery. Until it shall be over-unred, it is not a point for argument, it is obligatory on myself and my brethren, and on all judicial tributels over which this Court exercises an appellate

Power.

It is said the Territories are common property of the States, and that every man has a right to go there with his preperty. This is not controverted. But the Court say a slave is not property beyond the operation of the local law which makes him such. Never was a training the control of the contro local law which makes him such. Never was a trainmore authoritatively and justive attended by man.
Suppose a master of a slave in a British island owner a
n linen of property in England, would that authorize
him to take his slaves with him to England? The
Constitution in express terms recognizes the status
Slavery as founced on the municipal law: No person
hild to service or labor in one State, under the laws
thereof, excepting into another, shall," A.s. Now, unless
the fugitive except of from a place where, by the manicipal